OCT 12 1959
JAMES R. BROWNING, C

MOTION FILED SEP 30 1959

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 10, Original

UNITED STATES OF AMERICA
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MEMORANDUM OF ADDITIONAL RESEARCH CONCERNING CORRESPONDENCE WITH SPAIN DURING MR. JEFFERSON'S ADMINISTRATION AND MOTION FOR LEAVE TO FILE

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
HOUGHTON BROWNLEE, JR.
JAMES H. ROGERS
JOHN FLOWERS
Assistant Attorneys General
Capitol Station
Austin, Texas

Of Counsel:
PRICE DANIEL
Governor of Texas
Austin, Texas
JAMES P. HART
Brown Building
Austin, Texas
J. CHRYS DOUGHERTY
ROBERT J. HEARON, JR.
Capital National Bank Building
Austin, Texas

September 30, 1959

Baldwin Printing Company, Inc., 209 West Eighth Street, Austin

IN THE

Supreme Court of the United States

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No. 10, Original

UNITED STATES OF AMERICA
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MOTION FOR LEAVE TO FILE MEMORANDUM OF ADDITIONAL RESEARCH CONCERNING CORRESPONDENCE WITH SPAIN DURING MR. JEFFERSON'S ADMINISTRATION

The State of Texas desires to present to the Court the attached memorandum of historical research completed during the interim since its earlier brief was filed and moves for leave to file the same.

Respectfully submitted,

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
HOUGHTON BROWNLEE, JR.
JAMES H. ROGERS
JOHN FLOWERS
Assistant Attorneys General
Capitol Station
Austin, Texas

Of Counsel:
PRICE DANIEL
Governor of Texas
Austin, Texas
JAMES P. HART
Brown Building
Austin, Texas
J. CHRYS DOUGHERTY
ROBERT J. HEARON, JR.
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Plaintiff,

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MEMORANDUM OF ADDITIONAL RESEARCH CONCERNING CORRESPONDENCE WITH SPAIN DURING MR. JEFFERSON'S ADMINISTRATION

The State of Texas continues to assert the immateriality of "foreign policy" to the issues at bar. However, at the risk of making the matter assume more important than it has, the results of additional investigation concerning one narrow area of diplomatic history should be before the Court.

The United States relies (Gov. Br. 64, 75; Gov. Rep. Br. 31) upon a statement of Secretary of State Bayard made in 1886 (long after the admission of the respective defendant States and the Congressional approval of their historic boundaries) to the effect that

> "When we were involved, in the earlier part of Mr. Jefferson's Admisistration, in difficulties

> with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more;. . . . " Secretary of State Bayard to Secretary of Treasury Daniel Manning, 170 Ms. Domestic Letters 348; 1 Moore, *Digest of International Law* 720 (Washington, 1906).

In the year since the filing of the States' briefs an intensive effort has been made to locate correspondence between the United States and the Spanish Government which would support the assertion made by Secretary Bayard.

A thorough search of the National Archives in Washington, of the Archivo Historico Nacional in Madrid, and of all published papers and memoirs of Thomas Jefferson and each of the persons charged with negotiations with Spain during the period from March 4, 1801, through March 4, 1809, when Thomas Jefferson served as President of the United States, has failed to reveal any evidence that any correspondence, such as Secretary Bayard describes in 1886, ever took place.

Three affidavits evidencing this thorough search are attached as Exhibits A, B, and C. The originals of these affidavits have been deposited with the Clerk of the Court to be filed with the papers in this case.

We infer that the Government has not been able to find any such correspondence; thus far, the Solicitor General has cited only Secretary Bayard's letter, written more than 80 years after "the earlier part of Jefferson's Administration."

Actually, Mr. Jefferson, as Secretary of State in 1793, referred to one league (3 miles) as a minimum territorial distance and called it "the smallest distance, I believe, claimed by any nation whatever", adding immediately that the distance "of three sea-leagues has some authority in its favor."[1] Furthermore, in 1805 while President, Mr. Jefferson advocated a wider area[2] and ordered the arrest of all "vessels found hovering on our coasts within the limits of the Gulf Stream".[3] He never fixed a maximum limit for the United States or refused to recognize any limit in excess of 3 miles asserted by any other nation.

Secretary Bayard's statement is an historically inaccurate one. It attributes to an earlier time the 1855 Marcy correspondence with Spain concerning the limits of Cuba and then incorrectly reports even that. See Joint Brief, p. 124.

Bayard wrote this letter only shortly after the expiration of the 1871 Treaty of Washington and after the renewal of Canadian ship seizures had caused him to begin a personal study of the North Atlantic Coast Fisheries. See Tansill, *The Foreign Policy of Thomas F. Bayard, 1885-1897*, 212-222 (New York, 1940).

Francis Wharton, then Solicitor of the Department of State, gave a great deal more study to the

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[1] 1 *American State Papers* (*Class I Foreign Relations*) 183 (Lourie & Clarke ed. 1832); Joint Brief p. 76-78.

[2] 1 *Memoirs of John Quincy Adams* 375-376 (Adams ed. 1874); Letter Thomas Jefferson to James Monroe, U. S. Minister to Great Britain, May 4, 1806, 8 *Writings of Thomas Jefferson* 447, 449-50 (Ford ed. 1897).

[3] Message to Congress, December 3, 1805, 1 *American State Papers* (*Class I Foreign Relations*) 66.

problem in connection with the new questions being raised by the slaughter of seals in the Bering Sea by Canadian and British fishermen, and on September 4, 1887, he wrote Secretary Bayard that there was a

> "... good deal worth considering in the position taken by you [Bayard] when we first began to work at the fishery question, that the three-mile zone was not an arbitrary cosmopolitan rule, but a rule adopted by compromise and custom for certain specific coasts, among which that of North East America was conspicuous. I am positive that this is the conclusion we came to, for in making up the *Digest*, after talking with you and Mr. Moore, I was careful to state and restrict the three-mile rule so as to apply it to the N. E. Coast on the basis of custom and diplomatic settlement. In fact, with the authorities before me, I could not do otherwise. Mr. Jefferson, for instance, while adhering to the three-mile rule, as the basis of custom for the N. E. coast, maintained, and so we quoted him, that the territorial waters of the United States extended on the S. E., for the purposes of police protection, over the Gulf Stream to Cuba.
>
> "Now this does not mean that we are to claim Behring's Sea. That is absurd. But it does mean, I think, that the principle of territorial waters is that wherever a sovereign has property, there he is to have sufficient police control over the waters adjacent to such property as enable him to protect it. This is the rule of the law of nations, a rule as much growing out of the conditions of the times as did the three-mile rule grow out of the conditions of the times in which it was generated. Observe,

> I do not say that the three-mile rule is not applicable to the N. E. fisheries. It is, by force of adoption and custom and diplomatic correspondence, but I do not think it is applicable to the Seal Fisheries whose protection and preservation require a larger margin. Old precedents do not make present law under conditions to which they are not applicable.
>
> "As far as I recollect, the three-mile rule has never applied to the North Pacific. We fought against territorialising of Behring Sea. But we never . . . set up as against it the three-mile rule. As a matter of International Law, . . . I do not think the three-mile rule binds the seal fisheries." Bayard Ms. reprinted in Tansill, *Id.* at 466-467.[4]

Thus, as late as 1887 the ablest men in the Department of State were not ready to assert that three miles was a maximum limit for all seas bordering the United States. This circumstance demonstrates again the necessity for close inspection of the historical facts at the critical dates and the dangers of attempting to deduce a consistent policy from isolated statements culled from diplomatic correspondence and memoranda.

One more general example should be cited. It is often said in the literature that the British

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[4] Francis Wharton had been the editor of *A Digest of International Law* (3 vol., Washington, 1886) printed by direction of a Congressional Resolution of July 28, 1886. "Mr. Moore" referred to by Wharton was John Bassett Moore, then Third Assistant Secretary of State and later editor of *A Digest of International Law* (8 vol., Washington, 1906).

Government has consistently adhered to three miles as a maximum limit, contending it to be an established rule of international law. But close inspection of the British record during the 19th Century reveals many of the same inconsistencies that show themselves in the practice of the United States.[5] Even after nearly a century of fostering the rule, the British conceded in 1910 that no universal agreement existed and that what general agreement there was "fixed three miles only as a minimum." In the "Case of Great Britain" filed in the North Atlantic Coast Fisheries Arbitration it is said:

> "It is undoubted law that a State has territorial sovereignty over a belt of sea adjoining its coast, subject to the right of passage by the commercial vessels of other nations. The extent of this belt was not definitely fixed by international law at the time the treaty [of 1818] was entered into, and though a width of three miles has since become generally accepted as the minimum limit of waters over which sovereignty may be exercised, there is not even now [1910] universal agreement on the point. Wider claims are put forward by some nations and by some writers, and the Institute of International Law in 1894 unanimously agreed to recommend six miles as the maximum." 4 *Proceedings in the North Atlantic Coast Fisheries Arbitration* 92 (Washington, 1912).

The problem before the Court is one of the application of the Submerged Lands Act. Congress could

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[5] Smith, H. A., *Great Britain and the Law of Nations* 144-164 (London, 1935). See Texas Brief 123-124; Joint Rep. Br. 29-31.

not have intended in the Submerged Lands Act to make the "existence" of the historic boundaries of the Gulf States depend upon isolated extracts from diplomatic notes dealing with distinct problems or written years after the dates made determinative by that Act when Governmental policy had changed and the Secretary of State was at pains to justify the new policy in the light of past events.

Respectfully submitted,

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
HOUGHTON BROWNLEE, JR.
JAMES H. ROGERS
JOHN FLOWERS
Assistant Attorneys General
Capitol Station
Austin, Texas

Of Counsel:
PRICE DANIEL
Governor of Texas
Austin, Texas
JAMES P. HART
Brown Building
Austin, Texas
J. CHRYS DOUGHERTY
ROBERT J. HEARON, JR.
Capital National Bank Building
Austin, Texas
September 30, 1959

I certify that I have served copies of the foregoing motion and the attached memorandum by mailing them to the offices of the Attorney General and the Solicitor General of the United States, Washington, D. C., this the ____ day of September, 1959.

_____

Will Wilson

EXHIBIT A

CITY OF WASHINGTON
DISTRICT OF COLUMBIA

BEFORE ME, the undersigned authority, on this day personally appeared Clarence L. Kulisheck, of 986 Patrick Henry Drive, Arlington 5, Virginia, who being by me here and now duly sworn upon his oath says:

My name is Clarence L. Kulisheck and I reside at 986 Patrick Henry Drive, Arlington 5, Virginia. I am qualified to do and have done research in the National Archives at Washington, D. C.

At the request of J. Chrys Dougherty, one of the counsel in No. 10, Original, styled United States v. The States of Louisiana, Texas, Mississippi, Alabama, and Florida, now pending in the Supreme Court of the United States, I made a thorough search in the National Archives in the month of September, 1958, in an effort to locate the correspondence referred to by Secretary of State Bayard in his letter of May 28, 1886, to Secretary of the Treasury Manning, 160 Ms. Dom. Set. 348, quoted in 1 Moore, Digest of International Law at 720, as follows:

> "When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, as far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more; . . . ."

My thorough search of the pertinent records in the National Archives reveals the existence of no correspondence between the United States and Spain during "Mr. Jefferson's Administration" [Thomas Jefferson was President from March 4, 1801, to March 8, 1809, and he served as Secretary of State from March 22, 1790, to December 31, 1793] which contains, or supports in any way, the above-quoted assertion made by Secretary of State Bayard.

Further affiant saith not.

/s/ Clarence L. Kulisheck

Clarence L. Kulisheck

Sworn to and subscribed before me by the said Clarence L. Kulisheck this the 14th day of September, 1959, to certify which witness my hand and seal of office.

/s/ Maurice R. Smith

SEAL
Notary Public
District of Columbia

EXHIBIT B

NATIONAL HISTORICAL ARCHIVE

Assistant-Director
Mr. Eugenio Sarrablo Aguarele=

Secretary
Mrs. Ma. Teresa de la Peña Marazuela

Affidavit at the request of Mr. J. CHRYS DOUGHERTY, residing at Austin, Texas (U.S.A.), relating to the fact that there does not exist any document in this Archive referring to a communication sent by the President, Mr. Jefferson, to the Spanish Government, between the years 1801 and 1809, about boundaries of territorial waters for the Isle of Cuba.

Madrid, July 14th., 1959.

Registered No. 8.497.

6178131

16ª Clase

Mrs. Maria Teresa de la Peña Marazuela, Licentiate in Phylosophy and Letters, belonging to the faculative body of Archivists, Bibliothecaries and Archaeologists, and Secretary of the National Historical Archive,

CERTIFIES: That, after examining thoroughly the catalogues, indexes, and card-indexes of this Archive, specially those of the section of the State,

and ever so particularly the bundles of documents marked with the numbers sixthousand threehundred and sixty-six, sixthousand threehundred and sixty-seven, sixthousand threehundred and sixty-eight, threethousand eighthundred and ninety-one, and threethousand eighthundred and ninety-one, bis, and threethousand eighthundred and ninety-two, there was not found any document referring to a communication sent by the President of the United States of America, Mr. Jefferson, to the Spanish Government, between the years eighteenhundred and one, and eighteenhundred and nine, inclusive, stating that the United States of America will grant Cuba the same boundary for its territorial waters, as those already established for their own country. And that the diplomatic correspondence of the period referred to, with all other series of documents, has been deposited in this Archive, proceeding from the General Archive of Alcalá de Henares (at present destroyed), in the year eighteenhundred and ninety-seven. And by virtue of this and where it may be convenient, and at the request of Mr. J. Chrys Dougherty, residing in Austin, Texas (United States of America), I issue the present document, with the stamp of this Archive and the approval of the Illustrious Director of same, consisting of this sheet of stamped paper of the 16th class, number: six million onehundred and seventy-eight thousand onehundred and thirty-one, to which is joined at the back a receipt of stamp-duty of five pesetas, B 157449, to comply with the ruling dis-

positions. Madrid, fourteenth of July, nineteenhundred and fifty-nine.

Signed: Ma. Teresa de la Peña

Approved:
The Director
P. A.
The Assistant-Director
Signed: Eugenio Sarrablo
Registered No. 8.497.

Approved in the Ministry of National Education, to legalize the signature of Mr. Eugenio Sarrablo Aguareles,Sub-Director of the National Historical Archive, to be, to all appearances, his.
Madrid, August 1st., 1959.
P. D. The Sub-Secretary,
Signed: Antonio Gonzalez.

No. 2693.
Approved in the Department of Foreign Affairs, to legalize the signature of Mr. Antonio Gonzalez, of the Ministry of National Education, to be, to all appearances, his.
Madrid, August 3rd., 1959.
P. The Sub-Secretary,
Signed:
Federico Ferrer y Sicars.

EXHIBIT C

THE STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared J. Chrys Dougherty, whose address is No. 6 Green Lanes, Austin, Texas, who being by me here and now duly sworn upon his oath says:

My name is J. Chrys Dougherty, and I reside at No. 6 Green Lanes, Austin, Texas. I am one of the counsel of record in No. 10, Original, styled United States of America v. States of Louisiana, Texas, Mississippi, Alabama, and Florida, now pending in the Supreme Court of the United States.

I have endeavored to locate the correspondence between the United States and Spain, referred to by Secretary of State Bayard in his letter of May 28, 1886, to Secretary of the Treasury Manning, 160 Ms. Domestic Letters 348, reprinted in 1 Moore, *Digest of International Law* at pages 718, 720 (Washington, 1906), as follows:

> "When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more; . . .

The undersigned and individual researchers working under my supervision have examined all of the published diplomatic correspondence of the United States during any period which could be referred to as "Mr. Jefferson's Administration" [Thomas Jefferson was President from March 4, 1801, to March 8, 1809, and he served as Secretary of State from March 22, 1790, to December 31, 1793]. In addition, we have examined the published personal papers of Thomas Jefferson and of each of the persons charged with negotiations with Spain during those periods.

We have found nothing to substantiate the statement made by Secretary Bayard.

Further affiant saith not.

/s/ J. Chrys Dougherty

J .Chrys Dougherty

Sworn to and subscribed before me by the said J. Chrys Dougherty on this the 15th day of September, 1959, to certify which witness my hand and seal of office.

/s/ Annette H. Westbrook

Notary Public in and for
Travis County, Texas

Seal
My commission expires
June 1, 1961

LE COPY

FILED
CT 12 1959
JAMES R. BROWNING, C

NO. 10, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

WRITTEN MEMORIAL OF ORAL ARGUMENT FOR ALABAMA

MacDONALD GALLION
Attorney General

GORDON MADISON
Assistant Attorney General

WILLIAM G. O'REAR
Assistant Attorney General

NICHOLAS S. HARE
Assistant Attorney General

WILLARD W. LIVINGSTON
Assistant Attorney General
Montgomery, Alabama

E. K. HANBY
Special Assistant Attorney General
Gadsden, Alabama

JOHN PATTERSON
Governor of Alabama

ROBERT P. BRADLEY
Legal Advisor to John Patterson, Governor of Alabama

WILLIAM C. YOUNGER
Director Department of Conservation,
Montgomery, Alabama

OF COUNSEL

NO. 10, ORIGINAL

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Now comes the State of Alabama and respectfully requests the Court for permission to file with the clerk of this Court sixty copies of the Written Memorial of its Oral Argument, for the Court's convenience and for others who may desire to have it for historical or other reasons.

Respectfully submitted,
MacDONALD GALLION
Attorney General
GORDON MADISON
Assistant Attorney General
WILLIAM G. O'REAR
Assistant Attorney General
NICHOLAS S. HARE
Assistant Attorney General
WILLARD W. LIVINGSTON
Assistant Attorney General
E. K. HANBY
Special Assistant
Attorney General

JOHN PATTERSON
Governor of Alabama
ROBERT P. BRADLEY
Legal Advisor to
John Patterson,
Governor of Alabama
WILLIAM C. YOUNGER
Director Department of
Conservation
OF COUNSEL

NO. 10, ORIGINAL

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UNITED STATES OF AMERICA,
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STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

ORAL ARGUMENT FOR THE STATE OF ALABAMA

The United States says that the international position of the United States controls; that at the time Alabama became a territory and when admitted to the Union, the United States claimed for itself, and limited its recognition of claims by others to, three miles from coast and no more. (Reply Brief of United States, page 3)

This contention is clearly without merit as already shown by prior arguments of the defendant states.

Alabama desires to present, however, for the Court's consideration, some of its additional reasons why the three mile rule in the Gulf of Mexico is not applicable.

VARIOUS WARS

As to events prior to the War of 1756, in which Spain and France fought against England, this Court remarked in **Johnson v. M'Intosh,** 8 Wheat. 543, that, "The contests between the Cabinets of Versailles and Madrid respecting the territory on the northern coast of the Gulf of Mexico were fierce and bloody".

In the War of 1756, England was victorious. As

a result, Great Britain became the unquestioned proprietor and had acquired title to all of Florida. On October 7, 1763, by proclamation, the King of Great Britain divided Florida into East Florida and West Florida.

West Florida was bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast, from the river Apalachicola to Lake Pontchartrain.

In 1781, Spain acquired West Florida by conquest from England. By the Treaty of 1783, which followed, Spain was seized and possessed of both East and West Florida.

As stated by Dr. A. B. Moore, "The History of Alabama", Volume I, page 82, "Now Spain controlled again the whole Gulf Coast, and her Sixteenth Century dreams of power and sway were revived".

Before that, for seventeen years, the British ruled West Florida, and for thirty-two years more, it functioned under the Spanish flag until the capture of Mobile by General Wilkinson in 1813, and Jackson's later capture of Pensacola.

This occupation and seizure was for security reasons and on orders from James Madison, President of the United States.

The Spanish, during the War of 1812, had allowed her Florida forts to be used by British Vessels and as distributing centers for supplies to the Indians.

The above occupation by the United States has been spoken of by Mr. Justice Baldwin, a former mem-

ber of this Court, as resulting from, ". . . the law-making, war-making power of the United States in authorizing the forcible occupation of the territory by an act of war . . .". **The Lessee of Pollard's Heirs v. Kibbe,** 14 Pet. 353, 10 L. Ed., pages 490-522.

The Encyclopedia Britanica under the heading, "Mississippi" states that the territorial limits of the Mississippi Territory were extended to the south by "the seizure of West Florida in 1810-13".

In 1814, the British Fleet made an attack on Fort Bower, now Fort Morgan, on Mobile Point, but was repulsed.

Later in 1815, while retreating from the mouth of the Mississippi, the British Fleet again attacked the Fort and this time captured it.

These various wars, seizures, and possessions of territory involving the Gulf Coast area south of Alabama and Mississippi and continuing almost to the time Alabama became a territory and Mississippi a state preclude any three mile rule from coast in the Gulf of Mexico, south of Alabama and Mississippi, by any nation, including the United States at the time Alabama and Mississippi became territories or at the time of admission into the Union.

DISPUTE WITH SPAIN

The United States claimed that the pertinent part of West Florida had been included in the Louisiana Purchase.

Spain claimed that no part of the Floridas had been ceded to France by the Treaty of St. Ildefonso,

and therefore could not be included in the Louisiana Purchase.

Alabama is well aware that this Court in **Foster v. Neilson,** 2 Pet. 253, Stated that Alabama was admitted into the Union as an independent state in virtue of the title acquired under the Treaty of April 1803.

The decision was based solely on the fact that Congress by its acts had so interpreted the Treaty of 1803, and that this interpretaion by Congress was binding on the Court.

It is well to note, however, that in 1804, shortly after the Louisiana Purchase, Mr. Monroe, in passing through Paris addressed a letter to Mr. Talleyrand, the French Minister of Exterior Relations, in which he set forth his views as to the boundaries of Louisiana. In reply, Mr. Tallyrand declared in decided terms that Spain had not ceded to France, West Florida; that in all the negotiations between the two governments, Spain had constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile. **Foster v. Neilson,** supra.

It is also interesting to note that in President Madison's Proclamation of October 1810, relative to the seizure of West Florida, he stated the territory would be held by the United States as "a subject of fair, friendly negotiation and adjustment."

This provision in the Proclamation caused the Minister of Great Britain to call upon this Government in behalf of her ally, Spain, to explain the reason why the United States had incorporated the territory west of the Perdido into the Union when it had

been declared that it was held subject to fair, friendly negotiation and adjustment. (3 State Papers For. Aff. 400)

History records that the United States and Spain settled their differences by the Treaty of February 22, 1819, which was not ratified, however, until February 19, 1821. In this Treaty the King of Spain ceded to the United States all the territories which belonged to him situated to the eastward of the Mississippi known by the name of East and West Florida.

The above facts of history likewise negative any three mile rule from coast in the pertinent part of the Gulf of Mexico at the time Alabama became a Territory or as of the date of admission to the Union.

MODERN DAY REFUTATION OF GOVERNMENT'S CLAIM

But we have a modern day and complete refutation of the Government's three mile claim.

In **Alabama v. Texas,** Mr. Justice Black in his dissenting opinion, while there considering the Submerged Land's Act, stated:

> "Some states are given a three mile strip of ocean; some states are given **about ten miles;** most states are given no ocean at all." (Emphasis supplied)

If Mr. Justice Black is correct, the United States is wrong. Their positions conflict.

A careful review of the opinions of the other justices in said case also leads to the same conclusion

as that expressed by Mr. Justice Black. Their disagreement was on the right to file the complaint in the first instance and not on the above construction of the Submerged Lands Act.

REAL QUESTION PRESENTED

So, the one and only real question presented is: Does the proper construction of Alabama's southern boundary, namely, "thence, due south, to the Gulf of Mexico, thence eastwardly, including all islands within six leagues of the shore, to the Perdido River", give to Alabama more than three miles from coast, but not exceeding three leagues under the Submerged Lands Act?

DESCRIPTION

In **Alabama v. Texas,** it was stated that Congress may deal with the submerged lands precisely as a private individual may deal with his farming property. It would seem to follow that Alabama may trace its title in the same manner.

West Florida, of which Alabama is a part, was described by the King of Great Britain for the first time in 1763. It was bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast, from the river Apalachicola to Lake Pontchartrain.

Subsequent transfers referred only to West Florida without a more specific description; therefore, the six league seaward boundary remained fixed and existed at the time the United States acquired it.

This unquestionably throws light on the mean-

ing of six leagues from shore as used in the southern boundary descriptions of Alabama and Mississippi.

The United States claims, in brief, that it seems that Louisiana's boundary description means that it is bounded to the south by the shore of the Gulf of Mexico.

If this claim is likewise made as to Alabama's southern boundary, such claim renders meaningless that part of the description, "including all the islands within six leagues of the shore."

This is true because by proceeding eastwardly along the coast line all the islands would lie north thereof. In such case, "including all the islands within six leagues of the shore" is given no field of operation and is rendered meaningless.

As a territory, the description provided that all that part of the Mississippi **territory,** which lies **within** the following boundaries, etc., shall constitute a separate territory and be called Alabama. As provided in the Enabling Act, the State shall consist of **all the territory included within** the following boundaries.

These were descriptions fixing boundary of a territory and state, and in order for the **territory** and islands to be **within** and **included within** and **consisting of all the territory within** six leagues of the shore, the line must go out that far to do so. To give meaning to the Enabling Act in all of its parts, a water boundary beyond the farthest island to the south is fixed. That boundary is six leagues from shore.

It is of some importance to note that in the boundary dispute between Louisiana and Mississippi, 202

U. S. 1, Louisiana contended the southern boundary of Mississippi would start westward from a point 18 miles south of the coast line, and Mississippi contended that Congress gave her "all lands under the waters south of her well-defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl River with Lake Borgue, including all islands within said limit".

The above suit was filed over fifty-six years ago; oil had not then been discovered. The United States did not intervene in that suit nor make any objection as far as we know to said claims.

Alabama starts eastwardly from the same point that Mississippi starts westwardly.

It is to be stated again that West Florida was bounded to the southward by the Gulf of Mexico, including all islands wihin **six leagues of the coast,** from the **river Apalachicola** to **Lake Pontchartrain.**

This is a boundary from Florida to Louisiana. Alabama is a segment, so to speak, of that boundary. The King of Great Britain evidently had good reason in 1763 to include all islands within six leagues of the coast.

Alabama's description as a territory and state must be considered therefore in the light of the 1763 Declaration of Boundary in determining its meaning and extent.

One of the most important of all points, however, is contained in Section 3 of the Enabling Act of March 2, 1819. There, in order to avoid encroach-

ment on the counties of Wayne, Greene, and Jackson in the State of Mississippi, it was provided as to the line as follows:

> ". . . the same shall be so altered as to run in a direct line from the northwest corner of Washington County **to a point on the Gulf of Mexico** ten miles east of the mouth of the River Pascagoula." (Emphasis Supplied)

Mississippi Sound was at that time called Pascagoula Bay. It is inland water north of the Gulf of Mexico. To a point **on the Gulf of Mexico,** establishes a water boundary beyond the Gulf shore.

It is a positive refutation of the claim of the United States and positive evidence of the correctness of Alabama's claim to a six league boundary in the Gulf of Mexico.

CONCLUSION

In his present brief, as lawyers sometimes do, the distinguished Solicitor General refers to the statement in Alabama's brief in the **Texas case,** "As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in width."

This statement is in error. As pointed out in our present brief, before the passage even of the Submerged Lands Act and before **Alabama v. Texas,** Governor Folsom's legal advisor, acting for him, appeared before the committees on the judiciary, who were then considering a Submerged Lands Act. He stated for the Governor, in pertinent part, "Alabama claims a distance under the grant by Spain of six marine

leagues, or about 20 miles, south into the sea from the shore line."

It hardly need be stated that under our Constitution it takes legislative and congressional action to change state boundaries. It cannot be done by a statement in brief.

It is well to note, however, that the brief of the Attorney General of the United States, on which Mr. Rankin also appeared, in **Alabama v. Texas,** devoted a large part to the authority of Congress to give one state more submerged lands than it might give to another. Today he says they all have three miles from coast and no more.

The Congress, a political branch of the Government, with the President's approval, recognized, by the language used in the Submerged Lands Act, that Gulf states may have as much as three marine leagues from the coast in the Gulf of Mexico. It left it to this Court to determine them.

The various descriptions of all the defendant states are such as to give to each three marine leagues from coast. Equitable principles call for no inequality among them.

Respectfully submitted,

MacDONALD GALLION
Attorney General
State of Alabama

GORDON MADISON
Assistant Attorney General
State of Alabama

WILLIAM G. O'REAR
Assistant Attorney General

NICHOLAS S. HARE
Assistant Attorney General

WILLARD W. LIVINGSTON
Assistant Attorney General

E. K. HANBY
Special Assistant
Attorney General

JOHN PATTERSON
Governor of Alabama

ROBERT P. BRADLEY
Legal Advisor to
John Patterson,
Governor of Alabama

WILLIAM C. YOUNGER
Director Department of
Conservation
OF COUNSEL